

J. B. Richards

35

THE
R E P L Y
OF
Sir GEORGE DOWNING,
Envoy Extraordinary of his Majesty
of Great Brittain, &c.

Delivered the 13. of July 1662.

Upon
THE ANSVVER
Of the
ESTATES GENERAL
Of the United Provinces,
To His MEMORIAL of the 20. of
April last.





THE underwritten Envoy Extraordinary of his *Most Sacred Majesty* of Great Brittain, &c. having received, examined and considered the answer of their Lordships the Estates General of the United Provinces, of the 22. of June last past, to his Memorial of the 20. of April foregoing: In so far as the said Memorial did concern two English Ships belonging to London, the one called the *Bona Esperanza*, and the other called the *Henry Bonaventure*, finds that the matter of fact complained of, is not in the least therein denied, but confessed and acknowledged; yet as to his demand thereupon for satisfaction and reparation to the persons injured thereby, their Lordships indeavour to avoid it upon a double ground.

First, upon the account of the Treaties made in the Years of 1654. and 1659.

Secondly, that though the said Treaties were not yet that the persons claiming have no right to what they demand.

Now as to the first, the said Envoy Extraordinary cannot but observe, that though their Lordships do in the beginning of their said Answer strongly alledge the said Treaties; and towards the end thereof, do accuse the person demanding satisfaction of great impudence for daring (*as they are pleased to term it*) to revive these pretences, and to importune his *Majesty* therein, or trouble their Lordships with so much as the examination thereof: yet notwithstanding throughout the said Answer, there is not so much as one word to explain how these matters are extinguished or voided by the said Treaties; and certainly those who would make satisfaction for so
con-

(3)

considerable damages by Ink and Paper only, had need make out very clearly and distinctly, and past all dispute, what they pretend and alledge; of which nature the said Envoy Extraordinary finds not one clause or word in the said Answer, and could he in the strictest and throughest examination thereof have found the least colour or ground for an allegation of that nature, he would not have troubled them with an answer to that particular; but their Lordships must give him leave to affirm that he doth not find in the one or the other of the said Treaties, any thing that doth extinguish or debarre this demand.

As for the Treaty of 1654. it doth indeed (*as is set down in the third Article*) bar and cut off all pretences in respect of damages during the late War, but these were matters which hapned many years before, and had no relation thereunto, and which the said Treaty was so far from abolishing or taking away, as that by the 30. Article thereof a particular and extraordinary way was set down for the making satisfaction for them. And if it could have been pretended that the persons complained had not ~~of~~ their part pursued and fulfilled, what was ~~of~~ their part to be pursued and fulfilled by vertue of the said Article, or that these matters had been thereby in any kind ended or determined, or that there had been any clause or words denoting that what matters should not be in that way determined, notwithstanding that the parties complaining should have accordingly done and fulfilled what was thereby required to be on their part done and fulfilled, should yet be abolished and cut off, there might then indeed have lain from hence some pretence against them; but the persons injured, though expecting very little good from the then usurping powers (being all of them out of favour, upon the account of their extraordinary loialty to his late Majesty of glo-

rious memory) and three of them excepted by name, and forfeited as to their whole Estates; yet seeing themselves in that exigency that either they must in pursuance of the said Article put in their claim or be debarred their rights; a claim was put in before the Commissioners sitting at London, within the time limited by the said Article, and pressed and pursued, as will appear by the writing herunto annexed, marked with the letter *B Num. 1.* but the three months time limited to the said Commissioners did expire, without giving any sentence or determination therein; and as to the further remedy set down in the said Article, (*viz.*) Commissioners of the Protestant Cantons of Swisserland, to determine all such matters within six months after as were not decided by the aforesaid Commissioners at London, if they had met accordingly; and that the persons claiming interest in these Ships had not addressed themselves unto them, there might then indeed have been something of a colour and pretence against them; but they never met, nor was it their business, nor in their power to cause them to meet, nor consequently could their not meeting be any prejudice to them; but on the contrary, a matter of grievance and injury to the only advantage of the East India Company of this Country, who have thereby kept them from satisfaction so many years more: Suppose the Commissioners who by that Article were to meet at London had never met, or suppose they had not met till after the 18. of May, the day prefixed by that Article, after which no new allegation should be admitted, should from thence an argument have been drawn against these persons that they were cut off from all other remedy, or that their pretences were extinguished by that Treaty; and the argument is the same as to those other Commissioners, who afterwards were to have met in Swisserland; so that
there

there is nothing more clear then that the persons interested in those Ships remain in *statu quo*, and at liberty to demand justice and satisfaction by other means.

And for the Treaty of 1659. there is nothing also can be more clear, then that that Treaty does not in the least cut off or debar this matter; the general clause in the end thereof not debarring or cutting off all matters generally that were known in London the 20. of Jan. 1659. but only (as may appear by the said general clause thereof) such matters as hapned about the time that the Postillion, Frederick, Francis and John were taken, or afterwards, not (*or before,*) but (*or afterwards*) known at London the 20. Januar. 1659. and the occasion of inserting that general clause was this, about the time when the Postillion, &c. were taken and confiscated in the East Indies by the Dutch East India Company, or a little after, and which was known at London the said 20. of January, there were three or four other English Ships stopped in the East Indies by the said Dutch East-India Company; but after some time set at liberty to pursue their respective voyages; and it being at last yeilded unto here to give satisfaction for the Postillion, Frederick, Francis and John, which had been taken and confiscated it was absolutely insisted upon (*as some of their Lordships very well know*) and at last after long debate consented unto, that in case they would make reasonable satisfaction for what they had taken and kept, a clause should be inserted to cut off those other pretences for what they had only stopped for some time, but afterwards set at liberty; and accordingly upon this single score that clause was inserted, and was so penned as to reach its end and no further, that is to say, to cut off all pretences for all matters hapned in the East Indies about the time the Postillion, &c. were taken or afterwards, not (*or before*) as it appears by the writing marked with letter B Num. II.

So that hereby their Lordships may see how far the now setting on foot the pretences of the persons interested is from being in any kind prejudicial or contrary to the Treaties of 1654. or 1659. concerning which much more might be said, but that their *Lordships are pleased having made this objection themselves, to waive it*, and to admit the debate of this matter, upon which account also the said Envoy Extraordinary saies no more of it, but only to put them in mind that the said Treaties were neither of them made with the *King his Master*, nor with any of his Predecessors, and consequently, there lies not upon him the least obligation in point of right to take any notice of them; and that being so, and that the being admitted by his Majesty, is meerly out of good nature and kindness, would it not be a strange requital, and a just cause of provocation, and indeed such as his Majesty can in no wise suffer, not to rest well satisfied with the accomplishment and observation of them according to their literal and genuine meaning, but to put a forced and extorted sence upon them to the prejudice of his Subjects, and such as was never intended at the making of them, nor could never have been demanded or expected from the Usurpers themselves with whom they were made, nor from his Majesty if they had been made with him or with any of his Predecessors?

Now for the second objection, viz. that though the said Treaties were not, yet that the persons claiming have no right to what they demand; for the making good thereof their Lordships are pleased to alledge two things.

First, those reasons by which the East India Company of this Country maintain that they might with justice, yea that they were constrained to seize and confiscate the Ship *Bona Esperanza*; and for the *Henry Bonadventure*, that she was wholly abandoned by her Master and Mariners, and that they were willing

willing or made no difficulty to suffer the people of the East India Company of this Country to save the said ship with her lading.

Secondly, that this matter hath been intirely and absolutely ended by an amicable accord between the said East India Company on the one part, and Jacob Pergens and David Goubard on the other part, and that for a valuable consideration of 85000. gilders, which sum hath been in pursuance thereof really paid by the said Company.

Now as to the first of these Arguments the said *Envoy Extraordinary* takes notice that their Lordships do not insist upon it, but only (as it were *en passant*) hint thereat, nor do they so much as put their own stamp upon them, only calling them the said *Companies reasons*, and without setting down any of them in particular. And indeed no wonder, seeing that a greater and more uncolourable violence and robbery could not be committed then was that of the taking the *Bona Esperanza*, a ship belonging to London, set out from thence, laden only with English and Portugais goods, both at that time in peace and amity with this Country, and bound from *Goa to Maccao*, places both belonging to the said Portugais, and without the least occasion offered by the said ship, nor could there be a greater inhumanity and barbarism then the latter, the *Henry Bonadventure* not being abandoned by her Master and Mariners, as will appear by the writings marked with the letter C N. 1, II, IV. but only some of them coming to the Dutch, and praying for their assistance towards the saving of their ship and goods, and under the notion of assisting them to take and keep all to themselves: And for what is said of a certain paper signed by them, that they would not hazard their lives to save any thing, their Lordships will find sufficiently proved by the said writings, that the English did actually continue in their Ship, and so that it was no wrack by Law, Moreover, that they did assist
in

in saving the goods and ships provisions, as is abundantly proved in the said writings; to which give me leave to add, that the said Comp. did since agree with the Portugais to pay them a hundred thousand Roials of eight for their interest in the goods in the said *Bona Esperanza*, whereof fourscore thousand was actuallie paid; and for the English concerned both in the said ship, and in the *Henry Bonadventure*, though they were such as for their Loyaltie could have nothing of favour or countenance in their concernments, nor indeed have common justice done therein in the late distracted times; yet the said Company did (*to gain something of a pretence, as if they had made satisfaction to them*) pay unto Jacob Pergens and Goubard the sum of 85000. gilders, and that in a time when the affairs of his late Majesty, in his Kingdoms, were in the greatest disorders and confusion, and not capable to give the least protection to any English man beyond the Seas, being about the time of his most execrable murther; and so no man will doubt but that if the said East India Company could have justified in any measure what was done, they would not have parted with such a sum of monie, especiallie at such a time upon pretence of any damage done to the English.

Now as to the second Argument, herein is indeed the life and force of this matter, and if the agreement made with the said Pergens and Goubard be a good agreement, God forbid the East India Company of this Countrie should be called upon again, but if this be not a good agreement, then the pretenders have a fair and free way open for their demanding satisfaction.

Now as to Goubard, his pretence, is only to $\frac{1}{2}$ of the Ship *Bona Esperanza*, but had nothing to do with the Ship *Henry Bonadventure*, nor with the lading of either of them, and as for his agreement, in so far as his personal concernment went, it is admitted for good and not questioned; but as to the said

Pergens

(9)

Pergins who had no interest in either of the Ships or their lading, but claims by vertue of certain procurations and transports from William Courten, The said Envoy Extraordinary doth answer that the said procurations and transports are utterly void and null, as appears by an Indenture hereunto joined marked with the letter D *Num. I.* whereby the said William Courten had in the Year 1642. absolutely transferred all his right and interest in the said Ships unto Sir Paul Pinder and Sir Edward Littleton, and that upon a most valuable consideration for the sum of 8000. pounds sterling, principal money lent unto him.

And moreover the said Courten was declared Bankrupt for 15000. pounds sterling, by reason of his great losses in the Indies long before he gave the said procurations and transports to Pergens, as appears by the writings of the letter C *Num. III.* and consequently; was incapable by the Laws of Nations for the doing of any act for the disposal of his goods: And it is not amiss to observe, that though the East India Company of this Country, *out of their desire of gaining something of a colour to have ended this foul businesse, did part with that inconsiderable and pitiful sum of 85000. guilders (for so indeed it was, not in it self, but in comparison of these losses and damages.)*

Yet that they were at that time so advised of the ungroundedness of the said Pergens his pretences, that they did not part with a farthing to him till he had given them good security to repay the said monie, with interest, in case they should be further troubled in this matter, as appears by the writings marked D *Num. IV.* the which security is still good, so that the said Company can be no losers thereby.

And for what is further alledged, as if the said Pergens had really and effectually paid and contented all the other persons interested in the Ships and lading, if this were indeed so,

B

it

it would be justly blame-worthy for them to demand satisfaction a second time, but it is utterly false and untrue, nor hath any one of the persons pretending ever received from the said Pergens, or any other, upon this account, directly or indirectly, the value of one farthing.

*And as to the two Letters written by his late Majesty concerning this business in the year 1647. the one to their Lordships, and the other to Sir William Boswel, his then Resident in this Court; the said Envoy Extraordinary cannot but greatly wonder that their Lordships should so much as mention them; what were those Letters but Letters of recommendation and in general terms? And was his Majesty at that time in a condition strictly to examine or look into matters; had he his Council or his Admiralties about him? he knew that William Courten had set out those Ships before the Civil War in his Kingdoms, and had been informed that the said Ships had been taken by the Dutch East India Company; and what did he demand in his said Letters, but only that by the States General their help the said East India Company might be brought to reason, as are the words in his Letter to them; and as are the words in his Letter to Sir William Boswel, to press that satisfaction for 6884 pounds sterling, might speedily be made by the Netherlands East India Company; but whether that satisfaction to be made to the said Courten was to be made to Sir Paul Pindar, and Sir Edward Littleton, and those that claim under them, or to be made to Pergens, neither of those Letters do speak; and if they had, yet would not that in the least alter or determine the case in hand: Let me ask your Lordships whether ye take any of the King my Master his Letters to be proofs and evidences *pro* or *contra*, though written upon the best and throug^{ht} examination (he scarce recommending any matter till first considered and examined, and reported to him by som of his Admiralties or Privy Council)*

(11)

cel) but only make them a ground to look into and examine matters, and judge not according thereunto, but as you find matters upon the proof and evidence.

And how comes it to pass that these Letters of his late Majesty are produced in this kind, if *Pinder and Littletons transports* from Courten be good, nothing of this nature can make them invalid, nor if they were invalid make them good.

And for what their Lordships do hint that Sir Paul Pinder did in the years 1650. and 1651. prosecute the Bewinthebbers of the East India Company, before the Magistrates at Amsterdam, by one Jonas Abeels his *Procureur*, but did then let the said suit fall, nor hath to their knowledge since revived it, and so would thereby insinuate as if the said Pinder had been convinced of his error, and thereupon let it fall. *The Envoy Extraordinary* doth reply, that the fall of the said suit was not upon any such ground, but was occasioned by the death of the said Pinder, by which the said Abeels Procuration also ceased; and the War between England and this Countrie broke out a little after, at the ending whereof the persons interested in the said Ships did enter and persue their claim before the Commissioners that then met at London, and would have done the like in Switzerland, if the Instrument which was to have been sent thither had ever been sent, and Commissioners met upon them; the sending of which Instrument and convoking of which Commissioners was not their work, nor in their power to do.

And as for having their affairs *afterwards* recommended to their Lordships in any particular way, their persons were too black in the eyes of those that then ruled for them to hope for any thing of that nature, and so remained hopeless and helpless till the return of his most Sacred Majesty our rightfull and lawfull King and Sovereign: who finding these his distressed and most loial Subjects without satisfaction, and not excluded from

yet (by good)

July 13. 1662

R

(111)

from it by any Treaties or Transactions made in those times; upon full deliberation and Advice of his Privy Council, was pleased by his Letters dated at Whitehall the 21. of March last, earnestly and particularly to recommend this matter to your Lordships, as appears by the writings marked with the letter A, under the numbers of I, II, III, IV, V. and the letter D, under the numbers I, II, III. And the ~~Envoy~~ ^{Envoy} Extraordinary hath moreover by this last Post but one received another Order from the said Council further instantly to demand and insist that satisfaction be forthwith made to the said persons, and to report with all speed what he shall do therein to them: And he doth accordingly hereby earnestly demand that such orders be given, as that the said East India Company do forthwith, without further delay, pay unto them what is their due for their said ships and goods, which have been so long and so violently held from them to the ruine of many families, but to the inestimable gain of the said Company, who have not only all this while enjoied the benefit of their monies, but thereby also utterly discouraged and overthrown the Trade of the English to China and those parts, and ingrossed the same wholly to themselves.

Given at the Hague July 13. 1662. N. S.

GEORGE DOWNING.

R

July 13. 1662